



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-200-10 et seq.
Regulation Title:	Regulations for Respite and Emergency Care Admissions to State Mental Retardation Facilities
Action Title:	Amend the Regulations
Date:	Enter Date

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

These regulations provide general criteria and procedures for seeking respite and emergency care admission to training facilities for the mentally retarded operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (Department). These regulations outline the application process for respite and emergency care admissions and provide guidance as to the appropriate circumstances for such admissions. These regulations were promulgated in 1979.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Virginia's Office of the Attorney General advises that the Mental Health, Mental Retardation and Substance Abuse Board (Board) has the authority to promulgate these regulations under Va. Code §§ 37.1-10 and 37.1-65.2 but is not required to do so.

Va. Code § 37.1-10 confers authority to the Board to "... make, adopt and promulgate such rules as may be necessary to carry out the provisions of this title..." Va. Code § 37.1-65.2 states "The Board may promulgate regulations to provide for emergency and respite care admissions to mental retardation facilities..." The Board has used this discretionary legal authority to promulgate these regulations.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The notice of this periodic review was published in the Virginia Register on July 31, 2000. This notice requested public comment on the performance and effectiveness of the regulations in meeting stated goals. The Department also sent notice of this review to approximately 150 interested persons and organizations, including advocacy groups, state facilities for the mentally retarded and community services boards. One comment was received from Henrico Area Mental Health & Retardation Services. The respondent stated the following:

"The provision of respite and emergency care is a valuable and needed service to be provided by training centers. It is underutilized due to pressure to keep census numbers down and fear that persons admitted will not be discharged at the agreed upon time due to lack of community alternatives."

These regulations are intended to outline the requirements and process for respite and emergency care admissions. They do not establish the system or policy objectives which are discussed by this respondent. Therefore, the Department does not recommend changes to the regulations in response to the issues raised by this respondent.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The major goals of these regulations are:

1. To clearly articulate requirements that must be met to access emergency services and respite care in a mental retardation training center.
2. To assure that procedures for obtaining emergency services and respite care in a training center are minimally intrusive for individuals seeking access to respite and emergency care and their families and have minimum possible cost to training centers.

The participants in this review believe that the regulations are generally consistent with these goals. From all indications, the regulations are understandable and provide guidance needed by individuals and families who are seeking respite and emergency care. However, there are parts of these regulations which are somewhat out-of-date and are not consistent with statutory requirements. For example, the regulations at 12 VAC 35-200-30 state "...the length of emergency care stay at the facility will not exceed 21 consecutive days or a total of 35 days in a calendar year." Va. Code § 37.1-65.2 states, "No individual shall be admitted to a mental retardation facility under an emergency or respite care admission for more than twenty-one consecutive days or seventy-five days in a calendar year (emphasis added) This inaccurate reference is made in several parts of the regulations and should be changed to conform to the statutory maximum length of stay.

In addition, several of the definitions in these regulations appear to be outdated should be revised to conform to the regulatory context or statutory language, (e.g. "facility", "respite care", "emergency" and others). This should enhance the clarity of the regulatory provisions.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Department and the State Board have conducted an analysis of the applicable law and the existing regulations and have considered several alternatives for resolving the issues this periodic review:

Alternative 1 - No regulations. This alternative was rejected. This review found that these regulations are necessary to assure consistency and equity in the consideration of requests for respite and emergency care admissions to state facilities for the mentally retarded.

Alternative 2 – No change in the regulations. This alternative was rejected. These regulations have not been revised since their promulgation in 1979 and some revisions are needed to update the terms and provisions and to conform to current statutory requirements.

Alternative 3 – Amend the regulations. The alternative was accepted. Revisions are needed to update and clarify the provisions.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department and the State Board recommend “Alternative 3” to amend the regulations. This amendment should improve the clarity of provisions and update the regulations to comply with current statutory requirements.

Substance

Please detail any changes that would be implemented.

The amendment would not involve substantial changes to the format or substance of the regulations. Certain definitions would be changed to conform to the regulatory context or statutory language. It is anticipated that parts the regulations that provide procedural guidance would be clarified and updated to be consistent with statutory requirements and current practice and terminology.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These regulations outline the process for consumers and their families to seek care and support to address their individual needs. These regulations respect the authority and rights of parents in educating, nurturing and supervising their children and assuming responsibility for themselves.

These regulations should not have any discernable impact on marital commitment or family income.